

ORIGINAL

In the United States Court of Federal Claims

No. 16-1696C

Filed: May 1, 2017

NOT FOR PUBLICATION

FILED

MAY - 1 2017

U.S. COURT OF
FEDERAL CLAIMS

DAVID EUGENE BRINKLEY, III

Plaintiff,

v.

THE UNITED STATES,

Defendant.

Pro Se; In Forma Pauperis; 28 U.S.C.
§ 1915(g).

David Eugene Brinkley, III, Marianna, FL, plaintiff pro se.

Barbara E. Thomas, Trial Attorney, Patricia M. McCarthy, Assistant Director, Robert E. Kirschman, Jr., Director, Chad A. Readler, Acting Assistant Attorney General, United States Department of Justice, Civil Division, Commercial Litigation Branch, Washington, DC, for defendant.

MEMORANDUM OPINION AND ORDER

GRIGGSBY, Judge

On December 23, 2016, plaintiff *pro se*, David Eugene Brinkley, III—who is currently incarcerated at the Federal Correctional Institution located in Marianna, Florida—filed the complaint in this action challenging his federal criminal conviction and sentence to incarceration. *See generally* Compl. On January 24, 2017, plaintiff filed a motion to proceed *in forma pauperis*. *See generally* Pl. Mot. to Proceed *In Forma Pauperis*.

Prior to commencing this action, plaintiff filed several cases in the United States District Court for the Middle District of Florida challenging various aspects of his criminal conviction and incarceration. *See, e.g., Brinkley v. United States*, 8:14-cv-02790 (M.D. Fla. Dec. 2, 2014) (striking “as incomprehensible” plaintiff’s complaint); *see Brinkley v. United States*, 8:14-cv-00968 (M.D. Fla. Nov. 3, 2015) (striking plaintiff’s complaint because it is “untimely and incomprehensible”); *see also Brinkley v. United States*, 8:16-cv-03283 (M.D. Fla. Dec. 2, 2016)

(striking “as incomprehensible” plaintiff’s complaint). The district court dismissed each of these cases as frivolous. *Id.*

Upon careful review of the complaint in this matter, the Court concludes that plaintiff has not alleged facts showing that he is under imminent threat of serious physical injury. *See generally* Compl. As a result, plaintiff must pay the full filing fee prior to proceeding with the present matter, because plaintiff has previously filed at least three complaints that were dismissed as frivolous, malicious, or for failure to state a claim. *See* 28 U.S.C. § 1915(g).

And so, the Court **ORDERS** plaintiff to pay the Court’s \$400 filing fee in full within thirty (30) days of the entry of this Order. Failure to comply with this Order will result in the dismissal of plaintiff’s complaint for failure to prosecute, or to comply with an Order of the Court, pursuant to Rule 41 of the Rules of the United States Court of Federal Claims. RCFC 41(b).

In addition, the Court **STAYS** further briefing on the government’s motion to dismiss, pending plaintiff’s payment of the filing fee.

IT IS SO ORDERED.


LYDIA KAY GRIGGSBY
Judge